



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

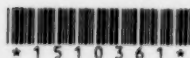
**Report on the visit made by the Subcommittee on
Prevention of Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment for the
purpose of providing advisory assistance to the
national preventive mechanism of the Republic of
Armenia**

Report to the State Party^{**}

* In accordance with the decision taken by the SPT at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, this report was sent confidentially to the State party on 15 November 2013. The State party gave notification of its decision to publish the report on 3 October 2014, in accordance with article 16, paragraph 2, of the Optional Protocol.

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I. Introduction

1. In accordance with its mandate set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Optional Protocol" or OPCAT), members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the SPT") visited the Republic of Armenia (hereinafter referred to as "Armenia") from 3 to 6 September 2013.

2. The SPT was represented by the following members: Ms. Mari Amos (Head of the delegation), Mr. Victor Madrigal-Borloz and Mr. Miguel Sarre Iguiniz.

3. The SPT was assisted by two human rights officers from the Office of the High Commissioner for Human Rights (OHCHR), as well as four local interpreters.

4. The objective of the visit was to provide advisory services and technical assistance to the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment of Armenia (hereinafter referred to as "the NPM"), in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol. The visit was intended to assist in strengthening the capacity and the mandate of the NPM, and in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment in Armenia. To that end, this report sets out recommendations and observations to the State Party, in accordance with article 11 (b), subparagraph (iv), of the Optional Protocol.

5. During the visit, the SPT met with officials from the General Prosecutor's Office, Ministry of Healthcare, the Standing Committee on State and Legal Affairs of the National Assembly, Ministry of Education and Science, Ministry of Justice, Ministry of Foreign Affairs, Police, Special Investigation Service, Ministry of Defense, Military Police, and the State Migration Service of the Territorial Management Ministry. It also met with representatives of the three public monitoring groups, as well as an additional civil society organization (Annex I).

6. Since one of the main reasons for the visit was to provide the NPM with advisory services and technical assistance, a number of meetings were held with the members and staff of the NPM, i.e. both the Department for the Prevention of Torture and Violence of the Human Rights Defender's Office as well as the Expert Council on the Prevention of Torture and Violence (hereinafter referred to as "Expert Council"). The aim of these meetings was to discuss the NPM's working methods and to explore ways of strengthening and increasing its effectiveness, as explained below. To observe how the NPM applies its working methodology, the SPT also visited, together with the NPM, three places of detention (Annex II).¹ The places of deprivation of liberty were chosen by the NPM. During the joint visits, members of the SPT adopted the role of observers, while members of the NPM led the visits.

7. The SPT wishes to express its gratitude to the authorities of the Government for the facilitation of the visit, in compliance with OPCAT obligations, and the assistance extended in arranging the necessary meetings.

¹ The NPM visited the Nubarashen Psychiatric Hospital, the Nubarashen Penitentiary Institution, and the Yerevan Detention Facility.

8. The SPT expresses its concern and regret however, that not all credential letters granting unimpeded access to all places of detention in Armenia were delivered prior to the start of the joint visits, which could have hindered such access in contravention to article 12 of the OPCAT. The SPT emphasizes the importance of receiving a general credential letter granting access to all places of detention, issued at the highest necessary level to be effective vis-à-vis any authority controlling any such place.

II. The national preventive mechanism

9. Armenia acceded to the Convention against Torture on 13 September 1993 and acceded to the OPCAT on 14 September 2006. On 8 April 2008, Parliament designated the Human Rights Defender's Office (HRDO) as NPM, through an amendment to the 2003 Human Rights Defender Act. Article 6.1 of the Act, introduced in 2008, states that the Human Rights Defender is designated as an 'independent national mechanism' under the OPCAT. The amendments provide no further detail on the functioning of the Ombudsman's Office as NPM.

10. The tasks and powers of the NPM therefore derive from the OPCAT, in particular articles 19 and 20, and have been further elaborated in the Internal Regulation of the NPM.

11. From 2009-2011, the NPM's functions were carried out by a team of 3 HRDO staff and 4 NGO representatives, selected by the Human Rights Defender. Visits to places of detention were carried out on the condition that delegations comprised at least one HRDO staff member and that the Human Rights Defender was informed of every visit beforehand. Funding came from the 3-year project under the European Instrument for Democracy and Human Rights.

12. In 2011, the Human Rights Defender established the Department for the Prevention of Torture and Violence within the Human Rights Defender's Office, which was charged with the fulfilment of the HR Defender's NPM mandate. The Department consists of 4 professionals (the head of the department, a psychologist, a lawyer and a doctor), who partake in the visits of the NPM. As of August 2013, the position of psychologist was vacant. As to the filling of these posts, the NPM indicated to the SPT that this will depend on the budget allocations of 2014.

13. The involvement of NGOs in the NPM was formalized in 2010 with the establishment of the Expert Council on the Prevention of Torture and Violence (the Expert Council), by the Order of the Human Rights Defender (Order N 002-L). Based on article 26 of the Law on the Human Rights Defender's Office, the Human Rights Defender may establish Expert Councils composed of individuals with respective background in human rights and fundamental freedoms, who shall be involved on a voluntary basis and perform their activities without any compensation. The Expert Council members support the HRDO in carrying out its activities as NPM through taking part in visits and compiling relevant documents on those visits, which are later included in the NPM report. The Expert Council functions in accordance with the "Regulations" confirmed by the Defender. It cannot publish its own reports, as it was established by and adjunct to the HRDO.

14. Thus, the NPM is a *de facto* 'Ombudsman plus' model (not *de jure* since the involvement of civil society in the work of NPM rests upon the Order of the Public Defender). The involvement was further regulated through a Memorandum of Understanding, signed in June 2011 between the Human Rights Defender and seven civil society organisations.

15. As of end March 2013, the Expert Council was composed of 11 members (7 NGO representatives, 3 independent experts who have expertise in psychology, sociology and

law, and 1 international expert from the EU Advisory Group). Members are appointed by the Human Rights Defender. However, there may be up to 20 members which means that there are vacant positions.

16. In February 2012, the Order was amended with the effect that the Expert Council is to perform its functions totally independently and without administrative support from the HRDO. Under the Order of Procedure of February 2012, the reports of the Expert Council are to be sent to the HRDO Department on the Prevention of Torture and Violence for review and possible additions. The reviewed reports are then returned to the Council for adoption. However, the Order of Procedure clearly states that any information received by the Expert Council is at the exclusive disposal of the Human Rights Defender.

17. The amendment to the Order in 2012 was introduced as no funding was available to pay for the expenses of the members of the Expert Council. The Expert Council continued its visits in March and April 2012 in a supporting capacity to the NPM but discontinued functioning from May/June 2012 due to a continued lack of funding.

18. The SPT acknowledges the State party's efforts in implementing its obligations under the OPCAT and expresses its gratitude to the support provided prior to and during the visit, which allowed it to meet with different stakeholders and monitor the implementation of the mandate by the NPM. The SPT notes that the NPM is faced with several obstacles hindering the full and effective implementation of its tasks, which this report will address in the next chapter, together with recommendations to the State party.

19. In accordance with its mandate, as set out in article 11 (b), subparagraphs (ii) and (iii), the SPT will address a separate confidential report to the NPM of Armenia.

III. Main obstacles faced by the current national preventive mechanism

20. *Institutional.* The SPT notes that Armenia is characterized by a proliferation and fragmentation of bodies aimed at the prevention of torture and ill-treatment, including the HR Defender in its role as NPM under the amended HR Defender Act, the Expert Council, as well as the public monitoring bodies relating to penitentiary institutions, police, and special boarding schools.

21. The Prison Monitoring Group was established by virtue of the order of the Ministry of Justice No. KH-66-N and its members are appointed by the Minister of Justice for five years. It has access to the pre-trial detention facilities and places of detention under the authority of the Ministry of Justice. The Police Monitoring Group, established in 2005, has access to the police temporary detention facilities and monitors conditions in these facilities. It has the same working methods as the Prison Monitoring Group, and its members are appointed by the Head of Police for a three-year term. The third public monitoring group, monitoring special boarding schools, was created in 2006 by Order of the Minister of Education.

22. The above demonstrates that, although largely reactionary in nature, the mandates of the public monitoring groups overlap greatly with that of the NPM, both in substance as well as regarding types of places of detention. Moreover, almost all members of the NPM Expert Council are also members on one of the three public monitoring groups. Not only does this risk creating confusion on the part of authorities in charge of places of detention as well as personnel working therein as to the mandate and identity of the NPM, it also reduces the effectiveness of the work undertaken by the NPM, and risks leading to incoherent results due to parallel monitoring.

23. In addition, the SPT has observed that the interaction and cooperation between these bodies depends largely on the readiness of the different organs to do so. The result is that the efforts undertaken for the prevention of torture are largely ad hoc and irregular in nature, lacking any overall strategy, systematized follow up, and mutual cooperation. The SPT also notes that several authorities have expressed the preference that sustainable and effective arrangements be put in place instead of a fragmented structure.

24. The SPT therefore deems it crucial that the State party first of all articulate a unified vision of its work of torture prevention, a vision that takes into account the best practices, challenges and other experiences accumulated by the different mechanisms that have existed at the national level to monitor places of detention, and that takes into account the differentiated roles of State, civil society and international cooperation. The aim of such an exercise would be to determine how overlapping mandates and duplication of efforts may be avoided and to determine, together with the relevant national stakeholders, which institutional configuration would be the most effective and efficient structure for the prevention of torture in the Republic of Armenia.

25. *Legal basis.* A striking weakness in the current functioning of the NPM is the absence of a separate legislative text regulating its functions, mandate, relation with subsidiary bodies, such as the current Expert Council, and other issues that ought to be regulated, in line with part IV of the OPCAT.

26. While the institutional format in which the NPM is set up is left to the State Party's discretion, it is imperative that the NPM law ensures full compliance with OPCAT and the SPT "Guidelines on national preventive mechanisms"² as well as the functional and operational independence of the NPM, also taking into consideration the Paris Principles. The SPT deems the adoption of a separate NPM law as a crucial step, though only after the articulation of the vision for the prevention of torture and identification of the appropriate NPM model for the Republic of Armenia, as mentioned above in paragraph 24.

27. The SPT wishes to emphasize the importance that the NPM be granted, as a minimum, the power to regularly examine the treatment of persons deprived of their liberty in all places of detention, as defined in article 4 OPCAT, to issue recommendations to the relevant authorities, and to submit proposals and observations on existing or draft legislation. It is furthermore important that the NPM is funded through a separate budget line in the State budget, and be assured complete financial and operational autonomy.

28. *Financial resources.* The SPT notes that the HRDO, and hence the NPM, is characterised by a lack of financial resources. The adoption of the 2013 annual budget by the Government did not include the 11 million AMD increase asked for by the Human Rights Defender in order to adequately carry out the NPM mandate. In reaction, the Human Rights Defender stated in the national press that only 50 per cent of the minimal demands of its staff is financed by the State budget, the rest assured through foreign grants, a construction that he deemed a blow to his independence. The Human Rights Defender decided that for 2014 he will not apply for foreign grants anymore, and requested that international organizations fund the NGOs directly.

29. An example of one of such grants was the "Preventing Torture and Ill-treatment in Closed and Semi-Closed Institutions Indifference" project, funded by the British Embassy in Armenia. The project was implemented by the NGO "TRTU" (one of the NGO members

² CAT/OP/12/5.

of the Expert Council), with the support of staff of the HRDO Department for the Prevention of Torture and Violence and Expert Council representatives. The project ended on 30 March 2013, with over 130 visits conducted in total.

30. One of the consequences of this lack of funding was the inability of the HRDO to pay for the expenses of the members of the Expert Council. This led to the amendment in February 2012 of the Order establishing the Expert Council, with the effect that the Expert Council was supposed to perform its functions totally independently and without administrative support from the HRDO. The Expert Council continued its visits in March and April 2012 in a supporting capacity to the NPM but discontinued functioning from May/June 2012 due to a continued lack of funding. Up to that point, all the expenses for the monitoring activities of the Expert Council seem to have been paid for by the members themselves. Therefore, the Expert Council is currently solely dependent on project funding and cannot be regarded as an effective part of the Ombudsman "plus" model.

31. In addition, the current dire financial situation of the NPM has also impacted the capacity of the NPM to issue periodic and ad hoc reports.

32. **The SPT urges the State party to provide the NPM, in its current and future form, with the financial resources needed in order for it to be able to systematically and adequately accomplish all tasks it is mandated to fulfil, in line with paragraphs 8, 11 and 12 of the NPM Guidelines, as well as paragraph 40.8 of the national human rights strategy of 2012 developed by the Security Council of Armenia. The State party should ensure funding to the NPM through a separate line in the national annual budget referring specifically to the NPM. This funding should be at such a level as to allow the NPM to carry out its visiting programme in all regions of the country and to conduct follow-up visits, recalling that an adequate budget helps secure the functional and perceived independence of the NPM. It should also allow the NPM to draw up annual work plans for visits, and to systematically enlist the support of bodies it is cooperating with. Such funds should also be sufficient for the logistical and other infrastructure related needs, including publication of its reports and relevant dissemination tools, arising from the execution of its mandate.**

33. *Human resources.* The SPT notes that the current capacity of the HRDO to conduct visits is severely limited. The Department for Prevention of Torture and Violence of the HRDO consists of 3 professionals (the head of the department, a lawyer and a doctor), whilst, as of August 2013, the position of psychologist is vacant.

34. **The SPT emphasizes that the State should ensure that the NPM is able to carry out visits in the manner and frequency that the NPM itself decides, providing the NPM with the necessary resources to permit the effective operation of the NPM. Besides the necessary financial resources, this obligation also entails enabling the NPM to have a sufficient number of staff and guaranteeing their independence.**

35. The SPT also notes that there are no formal requirements for membership in the NPM Expert Council as neither the amended 2003 Act on the Public Defender nor the 2010 Order by the Public Defender on the Torture Prevention Expert Council contain any particulars. There is also no requirement of expertise in the field of torture prevention and no statute on holding incompatible positions or a prohibition to sit on more than one monitoring mechanism.

36. **The SPT recommends that the State party ensure that the NPM, in its current and future format, is staffed with a sufficient number of personnel so that its capacity reflects the number of places of detention within its mandate, as well as be sufficient to fulfil its other essential mandated functions under the Optional Protocol. The SPT also recommends that the State party ensure that these experts have the required**

capabilities and professional knowledge, including medical, psychological and other related expertise.

37. The SPT reminds the State Party that the provision of adequate financial and human resources constitutes a legal obligation under Article 18, paragraph 3, of the Optional Protocol and wishes to be informed, as a matter of priority, about the steps taken to provide the NPM with adequate financial and human resources to allow for its complete financial and operational autonomy.

38. *Cooperation.* The meetings of the SPT with the relevant Government authorities have also revealed little cooperation and interaction with the HR Defender in its function as NPM. Some authorities referred to cooperation with the institution, but this seems to have been more often with the HRDO in its mandate regarding specific complaints, not in its capacity as NPM. This highlights a clear lack of visibility of the NPM and may even point at a lack of understanding of the exact role of the NPM and the nature of its work. This lack of visibility may have a detrimental effect on the NPM's efficiency.

39. Furthermore, the SPT has received feedback that the State authorities do not proactively discuss NPM reports, and notes with concern that the NPM estimates that only 10 per cent of its general recommendations have been followed up by authorities.

40. The SPT wishes to emphasize the obligations stemming from the OPCAT and recommends that the NPM be given a prominent role, with optimal institutional and public visibility. It recommends that the State party ensure a meaningful dialogue with the NPM on possible implementation measures, in line with article 22 of the OPCAT. In this regard, a focal point could be identified in each of, or for all, the relevant ministries to follow up on the implementation of the NPM recommendations and to engage with the NPM accordingly. The SPT also recommends that the State Party take steps to increase public awareness about the mandate and work of the NPM and ensure that the NPM is recognised as a key component in the country's system for prevention of torture and ill-treatment.

41. The SPT recommends that the State Party publish and widely disseminate the Annual Reports of the NPM, including transmitting them to the SPT, in accordance with Article 23 of the Optional Protocol. The SPT urges the State party to introduce an institutional forum for the discussion and follow up to such reports. The SPT wishes to remind the State party of paragraph 29 of the NPM Guidelines, which calls upon States to publish and widely disseminate the NPM Annual Reports, and ensure that these are presented to and discussed in Parliament.

42. The SPT furthermore recommends that the State Party issue an annual report describing the effectiveness of the interaction of the Government with the NPM in assessing and eradicating torture and ill-treatment in places of detention in the Republic of Armenia. This report should be given wide publicity, and could be integrated into a more comprehensive analysis of the human rights situation in the State Party, but should be distinct from other statements related to the Human Rights Defenders Office or any other body.

43. *Access.* The SPT also notes that in its meetings with authorities, some Government representatives questioned the mandate of the NPM in relation to certain places of deprivation of liberty under their authority.

44. The SPT emphasizes that all relevant Government authorities should allow and enable the NPM to execute its mandate in full compliance with the provisions under OPCAT. The latter includes the obligation of the State to allow visits by the NPM to any place under its jurisdiction and control, public or private, where persons are or may be deprived of their liberty, either by virtue of an order given by a public

authority or at its instigation or with its consent or acquiescence, as stated in article 4 of the OPCAT. In order to fulfil this obligation, the SPT recommends that this be expressly included in the legislative basis for the NPM, and that the State maintain a dialogue with different stakeholders in the field to identify and clarify the exact meaning of the term "places of detention", in full conformity with the OPCAT.

45. The Subcommittee stands ready to assist the Republic of Armenia in fulfilling its obligations under the OPCAT in particular Art. 11 (1 b)) to provide assistance and advise on national preventive mechanisms.

IV. Final recommendations

46. The SPT recalls that prevention of torture constitutes an on-going and wide-ranging obligation of the State party. The SPT requests that the State Party keeps the SPT annually informed of any legislative and policy changes and other relevant developments regarding the NPM, in order that it might continue to assist the State Party in fulfilling its obligations under the Optional Protocol.

47. The SPT emphasizes that its visit provides Armenia with an ideal opportunity to demonstrate its goodwill and readiness to fulfil its international obligations under the Optional Protocol.

48. The SPT regards its recent advisory visit and the present report as the commencement of a constructive dialogue with Armenia. The SPT stands ready to assist Armenia, as far as it is able, in fulfilling its obligations under the Optional Protocol, in particular by the provision of technical assistance and advice, in order to achieve their common goal of prevention of torture and ill-treatment in the places of deprivation of liberty.

49. The SPT recommends that the State Party make this report public, believing this in itself to be a preventive measure. In addition, the SPT recommends that the State Party distribute this report to all the relevant Government departments and institutions.

Annex I

List of Government officials and other persons with whom the Subcommittee on Prevention of Torture met

A. National authorities

General Prosecutor Office

Mr. Harutyun Harutyunyan – Senior Prosecutor

Mr. Gagik Khachikyan – Head of Department on Crimes against Humanity

Mr. Vardan Avetisyan – Head of Department on Control to the Crimes

Ministry of Healthcare

Mr. Tsaghik Vardanyan – Head of Department on healthcare projects and quality management

Ministry of Education and Science of Republic of Armenia

Ms. Narine Hovhannisyan – Head of Department on General Education

Ministry of Justice

Ms. Narine Solomonyan – Head of International Legal Relations Department

Mr. Hayk Sargsyan – Assistant to the Minister of Justice

Ministry of Foreign Affairs

Ms. Karine Sujyan – Head of Human Rights and Humanitarian Issues Division

Police

Mr. Minas Arabyan - Head of Department on guard service of headquarters of the Police

Special Investigation Service

Mr. Armen Nadiryan - Deputy Head of Special Investigation Service

Ministry of Defense

Mr. Alik Avetisyan – Deputy Head of International Legal Unit

Military Police of Armenia

Mr. Hovik Petrosyan – Deputy Head of Military Police of Armenia

State Migration Service of the Territorial Management Ministry

Mr. Petros Aghababian – Head of Legal Division

B. Legislative branch

Ms. Lilit Yeremyan – Expert at the Standing Committee on State and Legal Affairs,
National Assembly

C. National Preventive Mechanism

Human Rights Defender's Office

Mr. Karen Andreyan, HR Defender

Ms. Ani Nersisyan, Head of Torture and Violence Prevention Division

Mr. Vladimir Baghdasaryan, Torture and Violence Prevention Division

Mr. Sevak Mkrtchyan, Torture and Violence Prevention Division

Mr. Ruben Martirosyan, Head of Criminal Procedural Rights Department

Ms. Anna Voskanyan, Adviser to the Ombudsman on External Relations

Ms. Erahuni Tumanyants, Expert on Prisoner and Soldier Rights

Expert Council on the Prevention of Torture and Violence

Mr. Artak Kirakosyan (Civil Society Institute)

Gayane Shahnazaryan (Civil Society Institute)

Mr. Michael Aramyan (Foundation against violation of law)

Mr. Varuzhan Sedrakyan (Children's Association of Armenian)

Ms. Mariam Martirosyan (Project harmony International)

Ms. Alina Derdzian (Collaboration for Democracy Centre)

Mr. Temik Khalapyan (TRTU)

Ms. Sirarpi Mughdusyan (Social Justice)

Ms. Laura Gasparyan (Armenian Association of Physicians after Grigor Magistros)

Mr. Artur Atanesyan (Head of Applied Sociology Department of Yerevan State University)

D. Public monitoring groups

Prison Monitoring Group

Mr. Robert Revazyan (Armenian Helsinki Committee)

Mr. Ruben Sargsyan

Police Monitoring Group

Ms. Hasmik Sahakyan

Mr. Suren Iskandaryan

Public Monitoring Group of Special Boarding Schools

Mr. Artak Kirakosyan (Civil Society Institute)

Mr. Varuzhan Sedrakyan (Children's Association of Armenian)

Ms. Marian Martirosyan (Project Harmony International)

Ms. Sirsard Mamikosyan

E. Others

Open Society Foundation

Annex II

List of places of detention jointly visited by the national preventive mechanism and the Subcommittee on Prevention of Torture

Nubarashen Psychiatric Hospital;

Nubarashen Penitentiary Institution;

Yerevan Detention Facility
